

Message Text

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ACTION EUR-12

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EO 11652N/A
TAGS: ETRD, PL, EFIN
SUBJ: TAXATION OF FOREIGN COMPANIES IN POLAND

REF: WARSAW 7998

1. SUMMARY: MINISTRY OF FINANCE OFFICIALS HAVE EXPLAINED FURTHER THE MAY 23, 1977, REGULATIONS GOVERNING TAXATION OF FOREIGN COMPANIES IN POLAND (REF). THE OFFICIALS SAID THE REGULATIONS DO NOT DISCRIMINATE AGAINST FIRMS WITH FOREIGN OFFICES, PARTICULARLY SINCE ANY TAXES PAID BY SUCH OFFICES COULD, UNDER POLAND'S DOUBLE-TAXATION AGREEMENTS WITH FOREIGN COUNTRIES, BE DEDUCTED FROM THE TAXES PAID TO THOSE COUNTRIES. ON A SEPARATE POINT, A MINISTRY OFFICIAL MENTIONED THAT THE GOP "HAS HAD UNDER ACTIVE CONSIDERATION" THE POSSIBILITY OF CONFERRING THE MORE FAVORABLE TOURIST RATE OF EXCHANGE ON THE LOCAL OFFICES OF FOREIGN FIRMS. HE SAID THIS WOULD BE DONE "IN THE NEXT FEW MONTHS" AND THAT FURTHER EFFORT FROM THE US SIDE WOULD NOT BE REQUIRED. END SUMMARY.

2. ON NOVEMBER 7, AN EMBASSY OFFICER CALLED ON JANUSZ BIALOBRZESKI, DIRECTOR OF THE TAXATION DEPARTMENT OF THE MINISTRY OF FINANCE, AND JAN BONIUK OF ITS FOREIGN COOPERATION DEPARTMENT, TO DISCUSS THE IMPACT OF THE MAY 23, 1977, REGULATIONS GOVERNING TAXATION OF FOREIGN FIRMS IN POLAND. MR. BIALOBRZESKI SAID THE NEW REGULATIONS WERE BASICALLY A CONTINUATION OF PREVIOUS GOP TAXATION POLICY AND SHOULD RESULT IN NO SIGNIFICANTE CHANGES IN THE OPERATIONS OF
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FOREIGN FIRMS IN POLAND.

3. IN RESPONSE TO OUR QUESTIONS, BIALOBRZESKI SAID THAT ORDINARY SALES AND OTHER PROFIT-MAKING ACTIVITIES OF BRANCH OFFICES OF FOREIGN COMPANIES ARE EXEMPT FROM THE TURNOVER TAX AND ARE SUBJECT ONLY TO THE INCOME TAX. MR. BIALOBRZESKI SAID THAT THESE PROVISIONS DID NOT DISCRIMINATE AGAINST THOSE US FIRMS WITH LOCAL OFFICES

BECAUSE ANY TAXES PAID IN POLAND COULD, UNDER THE US-POLAND DOUBLE-TAXATION AGREEMENT, BE DEDUCTED FROM THEIR US TAXES. THE NET PROFIT OF THESE FIRMS AFTER TAXES WOULD, THEREFORE, BE THE SAME. (COMMENT: ONE LOCAL REPRESENTATIVE OF A US FIRM HAD TOLD US EARLIER THAT PAYMENT OF POLISH INCOME TAX HAD LEFT HIM IN A DISADVANTAGEOUS POSITION IN RELATION TO OTHER EXPORTERS. WE WILL CONVEY BIALOBRZESKI'S EXPLANATION TO HIM. END COMMENT.)

4. BIALOBRZESKI CONFIRMED THAT THE INCOME TAX AND TURNOVER TAX ARE NOT ASSESSED ON ACTIVITIES OF TECHNOLOGICAL-INFORMATION OFFICES

IN POLAND. "CONSTRUCTION- CONTROL OFFICES" RESPONSIBLE FOR THE ASSEMBLY OF BUILDINGS OR COMPLETE PLANTS IN POLAND ARE TAXED IN ACCORDANCE WITH PROVISIONS OF RESPECTIVE DOUBLE-TAXATION AGREEMENTS. BIALOBRZESKI POINTED OUT THAT PARAGRAPH 15 OF THE REGULATIONS STATE THAT NONE OF THE PROVISIONS APPLY IF INTERNATIONAL AGREEMENTS TO WHICH POLAND IS A PARTY PROVIDE OTHERWISE.

5. IN RESPONSE TO OUR QUESTION, BIALOBRZESKI SAID THE PROVISIONS CONCERNING CALCULATION OF THE INCOME OF LOCAL OFFICES WERE DESIGNED TO SIMPLIFY PREVIOUS PRACTICE. HE SAID THAT PARAGRAPH 7 OF THE REGULATIONS PROVIDED THREE DAYS IN WHICH THIS INCOME COULD BE CALCULATED. FIRST, LOCAL OFFICE INCOME MAY BE DEMONSTRATED BY ACCOUNTING RECORDS; IN THIS CASE THERE IS NO MINIMUM RATIO ESTABLISHED BETWEEN LOCAL OFFICE INCOME AND TOTAL TURNOVER OF THE LIMITED OFFICIAL USE

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PARENT COMPANY WITH POLAND. SECONDLY, LOCAL OFFICES MAY CHOOSE TO EMPLOY THE

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STANDARD INCOME-TO-TURNOVER RATIOS GIVEN IN THE REGULATIONS (PARAGRAPH 4 OF REF) IF THEY CANNOT DEMONSTRATE THEIR INCOME THROUGH ACCOUNTING RECORDS OR IF THEY FIND THESE RATES TO BE MORE ATTRACTIVE. (BIALOBRZESKI SAID THAT DOW CHEMICAL CALCULATES ITS TAX ON THE BASIS OF THE 5 PERCENT STANDARD RATIO OF INCOME TO FOREIGN TRADE TURNOVER, RATHER THAN THE INCOME OF 7 PERCENT SHOWN ON ITS BOOKS.) THIRTYLY, THE LOCAL OFFICE MAY SEEK TO SHOW THAT ITS "SHARE IN PROFITS" WITH THE PARENT COMPANY IS LOWER THAN THAT GIVEN IN THE STANDARD RATIOS. IN SUCH CASES, HOWEVER, LOCAL OFFICE INCOME CAN FALL NO LOWER THAN 3 PERCENT OF TURNOVER. (COMMENT: BIALOBRZESKI SAID THIS MINIMUM LEVEL WAS INSTITUTED SPECIFICALLY TO COVER THE LOOPHOLE EXPLOITED BY JAPANESE FIRMS. HE SAID JAPANESE FIRMS LIST ALL PROFIT AS ACCRUING TO ACTIVITIES OF THE HOME OFFICE, WITH INCOME OF THE LOCAL OFFICE, FOR TAX PURPOSES, BEING EQUIATED WITH THE INCOME OF ITS EMPLOYEES. HE SAID THIS PRACTICE WAS ACCEPTED UNTIL JAPANESE REPRESENTATIVES BEGAN TOASTING THE JOYS OF DOING BUSINESS IN POLAND AT "BARGAIN-BASEMENT PRICES" DURING THEIR ENGAGEMENTS WITH MINISTRY OF FOREIGN TRADE OFFICIALS. END COMMENT).

6. WE ASKED BIALOBRZESKI HOW THE ACTIVITIES OF A MAJOR US FIRM LANDING A TURN-KEY OR INDUSTRIAL-COOPERATION PROJECT MIGHT BE AFFECTED BY THESE REGULATIONS. HE SAID ANY EARNINGS ON CONSTRUCTION OR ASSEMBLY WORK PERFORMED WOULD BE TAXED ONLY IF THE ACTIVITY LASTED MORE THAN 18 MONTHS; THIS IS IN ACCORD WITH THE US-POLISH DOUBLE-TAXATION AGREEMENT. HE SAID TECHNOLOGY TRANSFERS IN SUCH A PROJECT WOULD BE TAXED ON THE BASIS OF CAPITAL GAINS IF "THE LIMITED OFFICIAL USE

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COMPLETE TECHNICAL EXPERTISE" OF THE FOREIGN FIRM FOR THIS PROJECT WERE TRANSFERRED. IF ONLY A PORTION OF THIS TECHNOLOGY WERE BEING GRANSFERRED TO THE POLES, IT WOULD BE TAXED AS ROYALTY INCOME.

7. BIALOBRZESKI SAID THAT, IF A FOREIGN FIRM OBTAINED PARTY OF ITS INCOME IN ZLOTYS, IT COULD MAKE ITS TAX PAYMENTS FROM THIS INCOME. AL TAX ASSESSMENTS ARE LISTED IN ZLOTYS, HE SAID, AND TAXES WOULD ORDINARILY BE PAID IN ZLOTY TRANSFERS ACCOMPANIED BY HARD-CURRENCY TRANSFER RECEIPTS FROM THE HANDLOWY.

8. IN RESPONSE TO OUR QUESTION, ANOTHER MINISTRY OFFICIAL SAID THAT THE DISSATISFACTION OF OUR LOCAL COMPANY REPRESENTATIVES AT HAVING TO CONVERT MONEY AT THE OFFICIAL,AS OPPOSED TO THE TOURIST, RATE OF EX-CHANGE WAS WELL UNDERSTOOD. HE SAID HE EXPECTED THIS PROBLEM TO BE RESOLVED FAVORABLY "WITHIN THE NEXT FEW MONTHS." HE SAID THE ISSUE WAS UNDER ACTIVE CONSIDER-ATION AND THAT FURTHER EFFORT FROM THE US SIDE WOULD NOT BE REQUIRED.

9. COMMENT: ON THE BASIS OF THE ABOVE EXPLANATION, WE
DO NOT BELIEVE THAT THE NEW REGULATIONS NEED BE
RAISED DURING THE MEETING OF THE US POLISH TRADE
COMMISSION. OUR DELEGATION MIGHT HOWEVER, MAKE NOTE OF THE
REGULATION DURING DISCUSSION ON OTHER BUSINESS-
FACILITATION ISSUES. END COMMENT.
DAVIES

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